IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

CRL.A.No. 949 of 2007(C)

SC.233/2002 ON THE FILE OF THE COURT OF THE SESSIONS JUDGE, WAYANAD, KALPETTA.

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APPELLANTS: RESPONDENTS:

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1. JOSEPH, S/O. VERKEY, RESIDING AT KIZHAKKEKKARA HOUSE, KRISHNAGIRI, SULTHAN BATHERI.

2. MARY, W/O. JOSEPH, RESIDIGN AT KIZHAKKEKKARA HOUSE, KRISHNAGIRI, SULTHAN BATHERI.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENT:

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY P.P. SRI.PUZHAKKARA MOHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A.No. 949 of 2007

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Dated this the 25th day of September, 2007

JUDGMENT

When the application for extension of stay came up for orders, this Court heard the appeal itself and disposed of the same on hearing learned counsel for the appellants and learned Public Prosecutor.

2. The learned counsel for the appellants submits that the order impugned is not in accordance with the provisions under section 446 Cr.P.C. The learned counsel also submits that when the court notices that accused is absent on a particular day, it is the duty of the court to give notice to the appellants to produce the accused and to show cause why penalty should not be imposed under section 446 Cr.P.C. The order impugned would show that the accused was absent on a particular day, on that day the case was posted for examination of the witnesses and on that day the proceedings has been started against the appellants who are the sureties. It is not discernible from the impugned order that any notice has been issued to the appellants as contemplated under sub-section (2) of

Section 446 Cr.P.C. The court should see that the provision of section 446 Cr.P.C. has been strictly complied with before issuing an order of penalty.

3. In the above circumstances, the impugned order is set aside. It is made clear that quashing of the order would not preclude the trial court to initiate proceedings against the appellants as per law, if necessary.

With the above observation the appeal stands allowed.

K.Thankappan,
Judge.

mn.

K. Thankappan, J.

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Crl.A.No. /200

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Judgment
-6-2007